IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 888 of 2005
Date of decision: 31.7.2007

O.P. Garg ...Petitioner

Versus

UCO Bank and others ...Respondents.

CORAM:- HON'BLE MR. JUSTICE K.S.GAREWAL
HON'BLE MR. JUSTICE S. N. AGGARWAL

Present: Mr. H.C.Arora, Advocate,
for the petitioner.

Mr. Aseem Rai, Advocate for
the respondents.

K.S.GAREWAL, J.

Shri O.P.Garg was inflicted the punishment of compulsory retirement on July 26, 1999 on the basis of the order passed by Assistant General Manager/Zonal Manager (Disciplinary Authority). The operative portion of the order is as under:-

> "Sh. O.P.Garg (PFM No. 15471) presently posted as Assistant Manager, Malout Branch is hereby compulsorily retired from the Bank's services with immediate effect. However, he will be eligible to receive all the terminal benefits pursuant to his

compulsory retirement."

Against the above order the petitioner filed an appeal but the appeal was rejected. He also submitted many representations for release of retiral benefits. Ultimately on August 16, 2001, he was released his provident fund. The petitioner filed CWP 13552 of 2003 which was disposed of on August 28, 2003 directing the respondent-Bank to pass a speaking order in respect of retiral benefits alongwith interest on account of delayed payments on the basis of the representations that the petitioner had submitted. This led the petitioner to file further representation. On December 29, 2003, the DGM observed that the petitioner had received interest upto the date of payment of provident fund dues, therefore, he was not to be paid any further interest on provident fund for the period the payment was delayed. As regards the payment of interest on gratuity, the DGM ordered 10% simple interest be paid for the period from July 27, 1999 to August 15, 2001, on the gratuity amount paid to the petitioner of Rs. 2,17,351/-. However, as regards payment of leave encashment, the DGM held that the leave encashment was a privilege leave. Reference was made to Regulation 38 of the UCO Bank (Officers') Service Regulations 1979 which stipulated that all leave to the credit of an officer shall lapse on resignation, retirement, death, discharge, dismissal or termination. The DGM further went on to hold that the petitioner had been compulsorily retired, therefore, all leave to his credit stood lapsed and consequently he would not be eligible for encashment of the privilege leave accumulated upto the date of his compulsory retirement.

The learned counsel for the petitioner contends that the petitioner was entitled to payment of all retiral benefits without exception,

as were due to him on the date of his retirement on July 26, 1999. He was also entitled to payment of interest for the withheld amounts. According to the learned counsel, compulsory retirement was a type of retirement, therefore, the petitioner would be entitled to all benefits which were available to an employee who had retired, whether compulsorily or on superannuation. Reference was made to proviso to Regulation 38 in which it was laid down that where an officer retired from service, he shall be eligible to be paid a sum equivalent to the emoluments of any period, not exceeding 240 days, of privilege leave that he had accumulated. Similar was the position as regards the officer who died while in service but this privilege was not available to officers who were discharged, dismissed or whose services were terminated. The stand taken by the respondent-Bank is an unreasonable one. Proviso to rule 38 covers the case of all officers who have retired from service, irrespective of whether they retired compulsorily or on superannuation.

This Court in Ashwani Kumar Sharma Versus UCO Bank and others 2006 (4) Service Cases Today, 171 discussed the right of a compulsorily retired employee of UCO Bank threadbare. In respect of denial of leave encashment, it was held by Hon'ble Mr. Justice Ranjit Singh in a detailed judgment, after referring to Regulation 38, that provisions with regard to leave encashment had been made in the proviso, wherein it was stated that when an officer retired from service, he shall be eligible to be paid a sum equivalent to the emoluments of any period not exceeding 240 days of privilege leave that he had accumulated. This proviso made a retired employee eligible for payment of leave encashment. The Hon'ble Judge further went on to hold that the petitioner could not be treated as a

terminated employee and his right to leave encashment could not be denied to him. The order as regards denial of leave encashment was set aside with a direction to the bank to release the amount with interest @ 6%.

The petitioner in the present case had been wrongly denied encashment of leave through a careless mis-interpretation of Regulation 38 and without considering its proviso. From the Regulation 38 it would be revealed that all leave lapses on resignation, retirement, death, discharge, dismissal or termination. What this means is that on the happening of any of the above events an officer cannot insist that he should be permitted to continue in service to the extent of leave which still stood to his credit. Since leave lapses, the concerned officer must leave service. Funnily leave of an officer who dies while in service also lapse. It seems the framers of regulation probably thought that a dead person may continue on leave till the expiry of the leave to his credit, unless a regulation was framed.

Be that as it may, it is the proviso to Regulation 38 which applies to the petitioner's case and has been actually discussed in Ashwani Kumar Sharma's case (supra). As regards payment of gratuity made to the petitioner of Rs. 2,17,351/- on August 16, 2001, learned counsel submitted that these amounts had been paid without interest and referred to the order Annexure P/7 dated December 29, 2003 regarding payment of simple interest @ 10% for the period July 27, 1999 to August 15, 2001 on the aforesaid gratuity amount. Although interest was not paid to the petitioner at the time of release of the principal amount of gratuity on August 16, 2001, a sum of Rs. 20325/- was the second installment received by the petitioner on November 17, 2004 but the second installment was paid without interest. Therefore, the petitioner is entitled to 10% interest on this

amount from the due date (July 17, 1999) till the actual payment made on November 27, 2004.

In view of the above discussion, this petition is allowed. The petitioner shall be entitled to payment of emoluments for the period of privilege leave that he had earned (leave encashment) alongwith interest @ 10% from July 26, 1999 till date of payment.

The petitioner shall also be entitled to interest @ 10% on the second installment of gratuity which was paid to him on November 17, 2004, from July 27, 1999 till actual payment. The petitioner shall further be entitled to Rs. 10,000/- as costs.

(K.S. GAREWAL)
JUDGE

31.7.2007 **(S.N. AGGARWAL)**
prem **JUDGE**